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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,909	12/07/2001	Andrew Thomas	1509-252	7180

22879 7590 03/31/2006

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INTELLECTUAL PROPERTY ADMINISTRATION  
FORT COLLINS, CO 80527-2400

EXAMINER

ALBERTALLI, BRIAN LOUIS

ART UNIT PAPER NUMBER

2626

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/005,909	<b>Applicant(s)</b> THOMAS ET AL.	
	<b>Examiner</b> Brian L. Albertalli	<b>Art Unit</b> 2626	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 16 September 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

A Reply Brief received January 16, 2006 will not be considered because the Reply Brief is not in compliance with 37 CFR 41.41. See attached Detailed Action.

### DETAILED ACTION

On September 16, 2005 appellants filed an Appeal Brief under the rules set forth in 37 CFR 41.37(c). However, the following sections are missing from the Appeal Brief filed September 16, 2005:

- 1) "*Evidence Appendix*", and
- 2) "*Related Proceedings Appendix*".

Appellant is required to comply with provisions of 37 CFR 41.37(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 41.37(c) within ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication. Extensions of time may be granted under 37 CFR 1.136.

Since the original Appeal Brief received September 16, 2005 was defective, the Examiner's Answer mailed November 16, 2005 is now vacated.

In addition, a Reply Brief was received on January 17, 2006 in response to an Examiner's Answer mailed November 16, 2005. While it is acknowledged that the Reply Brief has been received, an Amendment to the claims was filed with the Reply Brief of January 17, 2006.

However, a reply brief "*shall not include any new or non-admitted amendment*". Therefore, the Reply Brief received January 17, 2006 will not be considered.

Furthermore, the Amendment submitted with the Reply Brief received on January 17, 2006 will not be entered.

The status of the claims is as follows:

This appeal involves claims 1-4, 7-12, 15-18, 20-22, and 24-25.

Claims 1-4, 7-12, 15-18, 20-22, and 24-25 are rejected.

Claims 5, 6, 13, 14, 19, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian L. Albertalli whose telephone number is (571) 272-7616. The examiner can normally be reached on Mon - Fri, 8:00 AM - 5:30 PM, every second Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (571) 272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BLA 3/27/06



**DAVID HUDSPETH**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**

HJD SP67M

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

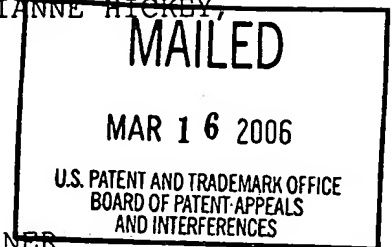
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* ANDREW THOMAS, ROBERT FRANCIS SQUIBBS, MARIANNE HICKEY,  
and PAUL ST. JOHN BRITTAN

Application No. 10/005,909

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was electronically received at the Board of Patent Appeals and Interferences on March 6, 2006. A cursory review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On September 16, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, a review of the document reveals that the following sections are missing from the Appeal Brief filed September 16, 2005:

- (1) "*Evidence appendix*," as set forth in 37 CFR § 41.37(c)(1)(ix); and

(2) "*Related proceedings appendix*," as set forth in 37 CFR § 41.37(c)(1)(x).

Accordingly, the Appeal Brief does not comply with the new rules under 37 CFR § 41.37(c). It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

In addition, a Reply Brief was received in the Office on January 17, 2006, in response to the Examiner's Answer mailed November 16, 2005. However, in accordance with the revision effective September 13, 2004, Title 37, Code of Federal Regulations, Section 41.43 states:

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief . . . .

The application file indicates that the reply brief has not been considered. Written acknowledgment of the reply brief is required to be sent to appellants.

Application No. 10/005,909

Further in-depth review reveals that an Amendment under 37 CFR § 1.116 was filed with the Reply Brief on January 16, 2006. 37 CFR § 41.41(a)(2) and § 41.41(b) states that "[a] reply brief shall not include any new or non-admitted amendment," and that [a] reply brief that is not in compliance with paragraph (a) of this section **will not be considered. Appellant[s] will be notified if a reply brief is not in compliance with paragraph (a) of this section.**" (Emphasis added).

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

- (1) hold the Appeal Brief filed on September 16, 2005 defective;
- (2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- (3) for the examiner to consider the supplemental Appeal Brief, vacate the Examiner's Answer mailed November 16, 2005 and issue a revised Examiner's Answer in response to the supplemental Appeal Brief;
- (4) have a complete copy of the supplemental Appeal Brief and any subsequent Examiner's Answer scanned into the record;

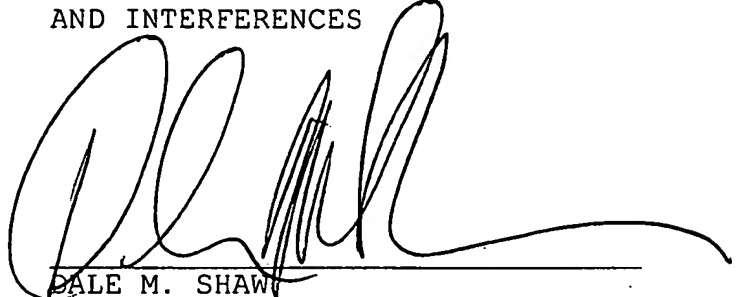


(5) provide written notification to appellants as to the status of said Reply Brief **and** Amendment received January 16, 2006 in accordance with 37 CFR §§ 41.41 and 41.43;

(6) have a complete copy of the written notification scanned into the record; and

(7) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

A large, stylized handwritten signature in black ink, appearing to read 'D. Shaw', is written over a horizontal line.

DALE M. SHAW  
Program and Resource Administrator  
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DMS:hh